

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
CHOON WON AN)	CASE NO. 05-65578-MHM
)	
Debtor)	
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SOON AN)	
)	ADVERSARY PROCEEDING
Plaintiff)	NO. 05-6277
)	
v.)	
)	
CHOON WON AN)	
)	
Defendant)	

SANCTIONS ORDER

A status conference was held in this adversary proceeding September 26, 2005.

Defendant's attorney failed to appear, failed to notify the court of his intention not to appear, failed to seek or obtain a continuance, and failed to notify Plaintiff's attorney of his intention not to appear. On September 26, 2005, the voicemail message at the office telephone number for Defendant's attorney recited that no one would be in the office until October 1, 2005.

In connection with the scheduling of the status conference, counsel for the parties had been instructed to engage in a settlement conference and to file a joint settlement conference statement. Prior to the status conference, Plaintiff filed a statement that Defendant's attorney had not cooperated in scheduling the settlement conference and, thus, none had taken place.

Additionally, in the main case, in connection with a motion for relief from stay filed by Plaintiff May 12, 2005, the parties had been instructed to confer in an attempt to reach an agreement regarding the relief sought by Plaintiff, which was modification of the automatic stay to allow the parties to proceed in state court to conclude the parties pending divorce proceedings. Defendant's attorney had failed to respond to Plaintiff's attempts to gain his agreement to a proposed consent order. As a consequence of that failure, hearing on the motion for relief from stay was rescheduled for October 2005. Ultimately, an order was entered November 2, 2005, incorporating the provisions originally proposed in early July, 2005. The failure of Defendant's attorney to cooperate in the resolution of the motion for relief from stay occasioned a four-month delay in obtaining the relief Plaintiff initially sought.

A show cause hearing was held November 8, 2005. In advance of that hearing, Defendant's attorney filed a written response October 8, 2005. In that response, Defendant's attorney admitted his failures to confer with Plaintiff's attorney, but asserts he did not receive the August 15, 2005 notice scheduling the status conference. He does not deny, however, that the certificate of service of that notice reflects his correct address. Defendant's attorney shows that he was out of the country from September 21, 2005 through October 1, 2005, but the court records show no request for a leave of absence. Defendant's attorney describes his unfamiliarity with the procedures in adversary proceedings.

None of Defendant's attorney's excuses provide an adequate defense for his lack of diligence in the prosecution of this adversary proceeding. The conduct of Defendant's attorney has caused needless delay and expense; exhibits a disregard for the needs of his clients; and

evidences a lack of diligence regarding his obligations to the court and legal system.

Accordingly, it is hereby

ORDERED that, within 20 days of the date of entry of this order, Defendant's attorney shall pay to Plaintiff's attorney the sum of \$350 to defray Plaintiff's increased legal expenses caused by Defendant's conduct. Within three days thereafter, Defendant shall file a certificate of such payment.

The Clerk is directed to serve a copy of this order on Plaintiff, counsel for Plaintiff, Defendant, counsel for Defendant, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the ____ day of December, 2005.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE